

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LAVERNE TATE,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

Case No. 12-cv-10157

HONORABLE STEPHEN J. MURPHY, III

ORDER ADOPTING REPORT AND RECOMMENDATION (docket no. 12),
GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (docket no. 9),
DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (docket no. 11),
AND REMANDING THE DECISION OF THE COMMISSIONER

This matter is before the Court on review of the Commissioner of Social Security's decision denying Plaintiff Laverne Tate's application for benefits. Plaintiff filed an application for a period of disability and disability insurance benefits on August 5, 2009, and an application for supplemental security income on October 19, 2009. ALJ Decision, Tr. 14, ECF No. 7-2. Her claims were initially denied on November 10, 2009. *Id.* She then filed a request for a hearing and an administrative law judge ("ALJ") held a hearing on June 8, 2011, and issued a written decision denying her claims on July 6, 2011. *Id.* The Appeals Counsel denied her request for review on December 12, 2011, making the ALJ's decision the final decision of the Commissioner. Appeals Council Notice, ECF No. 7-2. Plaintiff now seeks judicial review of this decision pursuant to 42 U.S.C. § 405(g) and claims that the Commissioner's findings are not based on substantial evidence. Compl. ¶¶ 3 & 9, ECF No.

Both parties filed motions for summary judgment. Plaintiff argues that the ALJ did not properly assess Plaintiff's complaints of pain, limitations, and credibility and failed to give proper weight to the assessment of her treating physician, Dr. Alali. Pl. Mot. Summ. J., ECF No. 9. Defendant counters that the ALJ properly evaluated the medical source opinions and that his decision was supported by substantial evidence. Def. Mot. Summ. J., ECF No. 11. The matter was referred to a magistrate judge for issuance of a report and recommendation. The magistrate judge recommends that the Court grant Tate's motion for summary judgment, deny the Commissioner's motion for summary judgment, and remand the decision of the Commissioner pursuant to 42 U.S.C. § 405(g). Report, ECF No. 12. The recommendation was based on the ALJ's misstatement of the record as it pertained to a 2009 MRI of Plaintiff's back. *Id.* at 10. The ALJ erroneously stated that the MRI did not show disc herniation, and the erroneous finding "clouds other portions of the administrative findings," including the ALJ's assessment of Plaintiff's credibility and the weight attributed to the opinions of her treating sources. *Id.* at 11. Accordingly, the magistrate judge recommends remanding the case for further administrative proceedings. *Id.* at 12.

A copy of the report and recommendation was served upon the parties on February 25, 2013. Pursuant to Civil Rule 72(b)(2), each party had fourteen days from the date of service in which to file any specific written objections to the recommended disposition. Neither party has filed any objections, therefore de novo review of the magistrate judge's finding is not required. See Fed. R. Civ. P. 72(b)(3) (requiring de novo review by a district judge only for "any part of the magistrate judge's disposition that has been properly objected to").

Having reviewed the file and the report and recommendation, the Court finds that the magistrate judge's analysis is proper. Accordingly, the Court adopts the report's findings and conclusions, and will enter an appropriate judgment.

WHEREFORE it is hereby **ORDERED** that the report and recommendation of February 25, 2013 (docket no. 12) is **ADOPTED**.

IT IS FURTHER ORDERED that Defendant's motion for summary judgment (docket no. 11) is **DENIED**.

IT IS FURTHER ORDERED that Plaintiff's motion for summary judgment (docket no. 9) is **GRANTED** consistent with the terms of this Order and the report and recommendation.

IT IS FURTHER ORDERED that pursuant to 42 U.S.C. § 405(g), the decision of the Commissioner is **REMANDED**.

SO ORDERED.

s/Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: March 15, 2013

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on March 15, 2013, by electronic and/or ordinary mail.

Carol Cohron
Case Manager